

improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11 1/2 percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 416, 418, 442, and 482

[BERC-358-F]

Medicare/Medicaid Programs; Fire Safety Standards for Hospitals, Skilled Nursing Facilities, Hospices, Intermediate Care Facilities and Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the fire safety standards for hospitals, skilled nursing facilities, hospices, intermediate care facilities and ambulatory surgical centers. It incorporates by reference the 1985 edition, rather than the 1981 edition now required, of the Life Safety Code of the National Fire Protection Association. This change primarily affects new applicants to the program. The incorporation of the 1985 edition of the LSC is intended to ensure that patients, personnel, providers and the public have the benefit of the most current fire protection standards.

EFFECTIVE DATE: The regulations are effective May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Samuel Kidder, (301) 966-4620.

SUPPLEMENTARY INFORMATION:

I. Legislative and Regulatory Background

A. Summary of Proposed Rule

We published a proposed rule in the *Federal Register* on January 22, 1987 (52 FR 2430) proposing to amend the fire safety standards for hospitals, skilled nursing facilities, intermediate care facilities, hospices and ambulatory surgical centers. It proposed to incorporate by reference the 1985 edition of the Life Safety Code (LSC) of the National Fire Protection Association (NFPA). Current regulations incorporate the 1981 edition of the LSC. The incorporation of the 1985 edition of the

LSC is intended to ensure that Medicare and Medicaid providers and recipients have the benefit of the most current fire protection standards.

B. Health Care Entities Affected by the LSC

In the proposal published on January 22, 1987, we cited the legislative history and requirements for the entities affected by the LSC. Listed below is a legislative and regulatory summary for those entities.

- Section 1861(e)(9) of the Social Security Act (the Act) and 42 CFR 440.10 requires that, to participate in Medicare, or Medicaid a hospital must meet the health and safety requirements as set forth by the Secretary. Those requirements are set forth in the regulations at 42 CFR Part 482, Subpart C—Basic Hospital Functions.

- Sections 1861(j)(13) and 1902(a)(28) of the Act requires skilled nursing facilities (SNFs) participating in Medicare or Medicaid to meet those provisions of the LSC of the NFPA applicable to nursing facilities. Those requirements are set forth in regulations at 42 CFR 405.1134, Conditions of participation—physical environment.

- Section 1861(dd) of the Act authorizes coverage of and reimbursement for hospice care. To participate in Medicare, hospices must meet the requirements in the regulations at 42 CFR Part 418, Subpart C—Conditions of Participation. the current hospice standard on fire protection, contained in 42 CFR 418.100(d), requires that a hospice meet the health care occupancy provisions of the 1981 edition of the LSC of the NFPA.

- Section 1905(c) of the Act authorizes optional Medicaid coverage for services in intermediate care facilities (ICFs). Those requirements are set forth in the regulations at 42 CFR Parts 442.321, 442.322 and 442.323, Subpart F—Standards for Intermediate Care Facilities Other Than Facilities for the Mentally Retarded.

- Section 1832(a)(2)(F) of the Act authorizes the Secretary to specify health and safety regulations for ambulatory surgical centers (ASCs). ASCs must meet the requirements in regulations at 42 CFR Part 416, Subpart B—Ambulatory Surgical Centers: Coverage and Benefits.

II. The Life Safety Code of the National Fire Protection Association

Since the beginning of the Medicare and Medicaid programs, we have been concerned with ensuring that health care facilities meet certain health and safety requirements to make certain that patients are safe from fire. Generally,

the Life Safety Code (LSC) developed by the National Fire Protection Association (NFPA) serves as the basis for governmental regulations, including those of the Medicare and Medicaid programs. Many Federal, State, and local governmental authorities have adopted the LSC as the basis for laws and regulations and have enforced provisions of the LSC. The LSC is a nationally recognized consensus standard, and includes fire protection requirements necessary to protect patients and residents in health care facilities.

The LSC is designed to provide a reasonable degree of safety from fire and similar emergencies. The LSC covers construction, fire protection, and occupancy features to minimize danger to life from fire, smoke, fumes, and panic. The code may be applied to both new and existing buildings. The development and maintenance of a body of fire safety codes and standards is one of the NFPA's primary functions. The standards development is accomplished by technical committees, which are composed of experts in the fire safety field, and represent a broad spectrum of interests including fire marshals, architects, engineers, and representatives from private industry and government.

The Fire Safety Evaluation System (FSES) for health care facilities was introduced in 1978 and was included as part of the 1981 LSC. The FSES provides health care facilities with an alternative method for achieving compliance other than waivers, if the facility does not meet the Health Care Occupancy Chapter of the LSC.

The NFPA revises the LSC every 3 to 4 years to reflect advancements in fire protection. In the past, whenever the Secretary determined that a revised LSC contained significant changes which would be in the interest of health and safety, we have revised the regulations accordingly.

A significant change in the 1985 LSC is the inclusion of a new Chapter 21 of the LSC entitled "Residential Board and Care Occupancies." Also, included in the 1985 LSC is a new equivalency evaluation system for Residential Board and Care Occupancies, extending the principles of the FSES developed earlier for other types of occupancies, entitled "Fire Safety Evaluation System for Board and Care Homes" (FSES/BC). Both Chapter 21 and the FSES/BC allow flexibility in the physical plant requirements that a facility must meet depending on the clients and the staffing of the facility. If the facility has a high staff client ratio, and clients who are

mobile and capable of understanding fire hazard, then the physical plant requirement need not be as rigid.

The 1985 LSC contains several other features that clarify code requirements for health care occupancies:

- A gift shop is no longer automatically considered to be a hazardous area and is not required to be sprinklered or separated by 1 hour fire-rated construction. Fire protection requirements will be dependent upon the fuel load (combustibles) in the area and other factors.

- Stairway doors may now be held open, if this is accomplished by means of approved devices and methods.

- Atriums are now permitted in health care facilities, but some smoke barriers are required.

III. Provisions of the Proposed Regulations

On January 22, 1987, we proposed to amend, §§ 405.1134 (SNFs), 416.44(b) (ASCs), 418.100(d) (Hospices), 442.321 (ICFs), and 482.41 (Hospitals) to incorporate by reference the 1985 LSC. We proposed to retain the existing requirements in each of these sections for waivers. In addition, we proposed to retain acceptance of a State's fire and safety code in lieu of the LSC for hospitals, SNFs and ICFs that meet the Health Care Occupancies Chapters of the LSC. We also proposed to retain existing grandfathering provisions for hospitals, SNFs, and ICFs that meet the Health Care Occupancies Chapters of the LSC, and we proposed to add provisions for grandfathering ASCs and hospices. In addition, we proposed to rewrite §§ 405.1134(a), 416.44(b), 418.100(d) and (e), and 482.41(b) to improve their clarity without substantive change.

IV. Discussion of Public Comments on the Proposed Rule

We received 8 pieces of timely correspondence concerning suggested changes to the present fire safety standards for hospitals, SNFs, hospices, ICFs and ASCs. We received comments from the Texas Department of Human Services, the Council of American Building Officials (CABO), the Building Officials and Code Administrators International (BOCA), the American Health Care Association (AHCA), the American Hospital Association (AHA), the City of Middleton, Ohio, the City of Philadelphia, Pennsylvania, and the City of St. Louis, Missouri.

1. *Comment:* Five commenters urged the Department to recognize three building codes, as well as the LSC of the NFPA. The building codes recommended are promulgated by the following organizations: International Conference

of Building Officials (ICBO), BOCA, and Southern Building Code Congress International (SBCCI). Their codes are applicable in different States, when adopted by State law, but generally the BOCA code is used in the northeast and midwest States. The ICBO code is used in the west and northwest and the SBCCI code is used in the south and the southeast.

These commenters maintain that the building codes are equivalent to the LSC in terms of fire safety and in addition contain standards for other hazards, such as earthquakes, which the LSC does not contain. They also stated that they have unsuccessfully petitioned the Department on numerous occasions to recognize the building codes.

Response: The Secretary's authority to adopt a standard for fire protection other than that of the NFPA on a nationwide basis is very limited. For SNFs, section 1861(j)(13) requires the Secretary to adopt the LSC of the NFPA. For nursing facilities, section 4211 of Pub. L. 100-203 (at section 1919(d)) requires the Secretary to adopt the standards of the NFPA by October 1, 1990 (nursing facilities under this provision include all SNFs and ICFs that are Medicaid certified). This only leaves hospitals, hospices, and ambulatory care centers for which the Secretary could conceivably adopt one of the building codes on a nationwide basis.

However, the law under the new statute as well as current law, allows the Secretary to adopt a different fire safety standard in a particular State if the State imposes that requirement and the Secretary finds that it adequately protects residents and personnel. In order to assist States in determining whether the various building codes adequately protect residents and personnel, we have asked the National Institute of Building Sciences to evaluate these building codes. This evaluation will assist the Secretary in deciding whether State adopted building codes provide adequate protection. It will also help in judging the adequacy of these codes for hospitals, hospices and ambulatory surgical centers on a nationwide basis. Once this evaluation has been completed we will publish a recommendation as a notice in the *Federal Register* reflecting the results of the analysis and containing our conclusions as to whether the codes are comparable to the LSC of the NFPA. However, we could not accept any of the building codes for skilled nursing facilities under Medicare or nursing facilities under Medicaid on any other than a State by State basis.

2. *Comment:* Two commenters asserted that the Department should

prepare a regulatory impact statement on the cost to health care providers of having to meet two different codes. These commenters maintain that States and local governments adopt one of the three building codes. Consequently, a particular health care facility must comply with two different codes (a building code and a fire safety code required for Medicare and Medicaid participation), which at times are conflicting. The commenter asked the Department to prepare a regulatory impact statement on the cost of this conflict.

Response: We do not believe this problem results in any substantial economic impact. The differences, if any, are worked out in plan review by building code experts and fire safety code experts before construction. Moreover, architects are responsible for knowing the requirements of these codes and for developing plans that satisfy all codes. One commenter in discussing the problem of compliance with duplicate codes stated that, in all cases in his jurisdiction, the facilities that have been built under the BOCA code and who have had simultaneous review by the State agency, there have been no discrepancies noted for those facilities that were not caught on the plan review from the BOCA code. In most cases, the plan review deficiencies from the LSC review and the local review have ended up with duplicate "notations" which had to be corrected before the permits were issued or the buildings were approved. The commenter was speaking about duplicate agencies reviewing plans for nursing homes and hospitals and the duplicate fees from these agencies. This example does, however, illustrate the fact that differences in these codes, where they do exist, may be worked out at the plan review stage and do not necessarily result in expensive construction costs or retrofitting.

3. *Comment:* Two commenters complimented the Department for proposing the adoption of the 1985 LSC. They were particularly pleased with the provisions that would allow existing facilities to remain in the program if they continue to comply with previous editions of the LSC (grandfathering). One commenter did not like the grandfathering provision because it would allow older facilities to remain in the program while only complying with older editions of the LSC.

Response: Traditionally the Department has not required facilities to meet the provisions of a new code as long as they meet and continue to meet the provisions of the previous code. This

grandfathering is a necessary feature of the fire safety standards because to do otherwise would result in requiring facilities to meet specific standards that, if later changed, would require physical plant modifications and attendant expenditures.

4. Comment: One commenter was concerned about the definition of "new applicant." This term is used in the preamble to explain that facilities already in the program under one of the previous LSCs (for example, the 1967, 1973 or the 1981 editions of the LSC) did not have to meet the 1985 edition unless they were a new applicant. The commenter asked whether a new applicant would be a facility that was terminated (for reasons not related to fire safety) or a facility that changed ownership.

Response: The term "new applicant" is used only in the preamble. The regulation text does not use this term, but it does specify the date at which a facility can no longer comply with a previous code (the effective date of the final regulation adopting the newer code). The regulation text goes on to say that the facility is considered to be in compliance with the fire safety standard if it "continues to remain in compliance with that edition of the code." This means that a facility will not have a newer code applied to it under circumstances of change of ownership or decertification (for other than fire safety reasons) as long as it continues to meet the provisions of the applicable previous code. If, however, the facility is decertified for fire safety reasons, then it will be required to comply with the provisions of the currently applicable code if and when it reapplies for participation in the program.

5. Comment: One commenter stated that existing ICFs that currently comply with the LSC for health care facilities (Chapter 12 or 13) should not be required to comply with Chapter 21 of the LSC. Chapter 21 of the LSC establishes more flexible physical plant requirements depending upon the mobility status of the clients and the number of staff present in the facility.

Response: There is nothing in this regulation that would force an ICF to meet Chapter 21 of the LSC. The regulation requires the facility to meet the "applicable provisions" of the 1985 edition of the LSC. This allows a facility to meet Chapter 21, if applicable, but if it wishes, the facility may comply with the more stringent Chapters 12 or 13. As explained in the proposed rule, when we use the term "applicable provisions of the 1985 LSC", we mean that the surveyor has the discretion to apply the chapter of the Code that is pertinent to

the type of occupancy being surveyed. For example, if the surveyor determines that a facility provides only personal care, he or she will apply the Residential Board and Care Occupancies Chapter in most cases. On the other hand, if nursing care is provided, the Health Care Occupancies Chapters will be applied in most cases.

6. Comment: One commenter stated that there is a need for clarification about retaining the "alternative provisions for sprinkler requirements" for nonsprinklered one-story protected combustible facilities. This alternative provision can be found in the LSC survey report forms (Form HCFA 2786A, B and D). This provision allows a facility to remain in the program if it does not have sprinklers but does have equivalent or "alternative" provisions.

The alternative provisions require the facility to have: sprinklers in hazardous areas, automatic fire detection devices, patient room walls of 1 hour fire resistance rating, and an adequate fire department response time in lieu of sprinklers throughout the facility.

Response: This regulation does not affect the inclusion of the alternative provisions for sprinkler requirements presently contained in the survey report form. These "alternative provisions" have been in the survey report form since the early 1970s and before the FSES was adopted in 1982. (This is a system which allows a facility to be determined in compliance by having compensating building safety features even though it does not meet the exact building features of the LSC). Since the "alternative provisions" in the survey report form are basically equivalency features much like those found in the FSES, we do not intend to delete them.

V. Provisions of the Final Notice

Based on our analysis of the comments, we do not agree that any of the comments necessitate a change in the proposed rule. Therefore, as proposed, the following changes are being made:

A. SNFs: § 405.1134—Condition of Participation—Physical Environment

- We are amending the regulations to require newly participating SNFs to meet the applicable provisions of the 1985 edition of the LSC rather than the 1981 edition currently required.

- We are retaining the existing provisions for waivers of specific requirements of the LSC, and the use of a State's fire and safety code, in lieu of the LSC, if that code adequately protects patients in SNFs.

- We are retaining the provision that allows a SNF to continue to comply with

previous editions, including the 1981 edition, of the LSC. However, we are deleting the December 4, 1980, date up to which the 1967 and 1973 LSCs could apply. Currently, the regulations specify two dates: December 4, 1980 and November 26, 1982. It is not administratively feasible to establish two dates up to which previous codes could apply. Thus, we have retained the latest date possible.

- We are retaining the provision that prohibits the placement of blind, non-ambulatory and physically handicapped patients above the street level floor, if the facility is two or more stories and participating on the basis of a waiver of construction type or height and is not of fire resistive construction.

B. ASCs: § 416.44—Condition for Coverage—Environment

- We are revising the regulations to require newly participating ASCs to meet the applicable provisions of the 1985 edition of the LSC rather than the 1981 edition currently required.

- We are retaining the existing provision for waiver of specific requirements of the LSC, if the waiver will not adversely affect the health and safety of the patients and rigid application of specific provisions of the code would result in unreasonable hardship for the ASC.

- We are including a provision that will allow ASCs in compliance with the 1981 edition of the LSC to be considered to be in compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

C. Hospices: § 418.100—Condition of Participation for Freestanding Hospices Providing Inpatient Care Directly

- We are revising § 418.100(d) to require newly participating hospices to meet the applicable provisions of the 1985 LSC rather than the 1981 edition currently required.

- We are retaining the existing provision for waiver of specific requirements of the LSC, if the waiver will not adversely affect the health and safety of the patients and rigid application of specific provisions of the Code would result in unreasonable hardship for the hospice.

- We are including a provision that will allow hospices in compliance with the 1981 edition of the LSC to be considered to be in compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

- We are retaining the provision for hospices that prohibits the placement of

blind, non-ambulatory and physically handicapped patients above the street level floor, if the facility is two or more stories and participating on the basis of a waiver of construction type or height and is not of fire resistive construction.

D. ICFs: § 442.321—Fire Protection

- We are revising the regulations to require newly participating ICFs to meet the applicable provisions of the 1985 LSC rather than the 1981 edition currently required.

- We are retaining the existing provisions for waivers of specific requirements of the LSC, and the use of a State's fire and safety code, in lieu of the LSC, if that code adequately protects patients in ICFs.

- We are retaining the provision that allows an ICF to continue to comply with previous editions, including the 1981 edition, of the LSC.

- We are retaining the provision that prohibits the placement of blind, non-ambulatory and physically handicapped patients above the street level floor, if the facility is two or more stories and participating on the basis of a waiver of construction type or height and is not of fire resistive construction.

(We note that final regulations concerning fire safety for ICFs/MR were published in the *Federal Register* on April 18, 1986 (51 FR 13224) and comparably amended fire safety requirements for those facilities).

E. ICFs: § 442.322—Fire protection: Exception for Smaller ICFs

- We are deleting the existing provision that allows smaller ICFs (15 beds or less) primarily engaged in the treatment of alcoholism and drug abuse to comply with the less stringent lodging and rooming houses section of the residential occupancy requirement of the 1981 edition of the LSC. These less stringent requirements are allowed in the above facilities if a physician certifies that the residents are ambulatory, engaged in active treatment, and capable of following directions. The ICF regulations have been amended by this regulation to require the facility to meet the "applicable provisions" of the LSC. Chapter 21, the Residential Board and Care chapter, will be among the "applicable provisions." Thus, Chapter 21 would be applied to smaller ICFs primarily engaged in the treatment of alcoholism and drug abuse; depending on the evacuation capability of the residents and staff, the facility could be subject to less stringent physical plant requirements.

F. ICFs: § 442.323—Fire Protection: Waivers

- We are rewriting this section for clarity, without making any substantive changes.

G. Hospitals: § 482.41(b)—Condition of Participation—Physical Environment

- We are revising the regulations to require newly participating hospitals to meet the applicable provisions of the 1985 edition of the LSC rather than the 1981 edition currently required.

- We are retaining the existing provisions for the use of a State's fire and safety code, in lieu of the LSC, if that code adequately protects patients in hospitals.

- We are retaining the provision that allows a hospital to continue to comply with previous editions, including the 1981 edition, of the LSC.

- We are retaining the existing provision for waiver of specific requirements of the LSC, but only if the waiver will not adversely affect the health and safety of the patients.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final regulation that meet one of the E.O. criteria for a "major rule" that would be likely to result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although we cannot develop an estimate, we believe that the impact of this rule, considering both costs and savings, will not exceed the annual \$100 million threshold or other threshold criteria under Executive Order 12291. Therefore, we have not prepared a regulatory impact analysis.

Any impact of this rule will result primarily from previously implemented regulations. The 1985 LSC is an update of previously implemented requirements. Providers who continue to meet earlier editions of the code as appropriate have an option of converting to 1985 code requirements or, in certain circumstances, may meet the equivalency requirements of the FSES, instead of the LSC.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, SNFs, ICFs, ASCs, and hospices to be small entities.

The 1985 LSC is basically a modernization of previous requirements. Without sacrificing patient health and safety certain providers are given alternatives that were not previously available in meeting code requirements. In addition, the major cost factor in the 1985 LSC, the requirement that all new health care facilities 75 feet or higher must be fully sprinklered, is limited to new applicants. We anticipate only a small number of new facilities 75 feet or higher will apply to participate in the program, and that these requirements will not be unduly burdensome for them.

We cannot estimate quantitatively the potential impact of this regulation. We anticipate that the adoption of the Residential Board and Care Chapter of the LSC and the Fire Safety Evaluation System for Board and Care Homes (FSES/BC) will enable some small ICFs to serve more residents in a wider variety of settings with reduced capital expenditures for fire protection features. Since the Residential Board and Care Occupancy Chapter of the LSC and FSES/BC provides for various methods of achieving needed fire protection features, facilities will be able to tailor fire protection capital improvements to the specific needs of residents and staff.

For these reasons, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

C. Paperwork Reduction Act of 1980

These changes do not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Incorporation by reference, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and

recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Health professions, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Incorporation by reference, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 482

Administrative practice and procedure, Certification of compliance, Contracts (Agreements), Health care, Health facilities, Incorporation by reference, Health professions, Hospitals, Laboratories, Medicare, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Chapter IV is amended as set forth below:

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart K—Conditions of Participation; Skilled Nursing Facilities

1. The authority citation for Subpart K continues to read as follows:

Authority: Secs. 1102, 1861(j), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(j), and 1395hh), unless otherwise noted.

2. In § 405.1134, the introductory language preceding paragraph (a) is republished, and paragraph (a) and the footnote are revised to read as follows:

§ 405.1134 Condition of participation—physical environment.

The skilled nursing facility is constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public.

(a) *Standard: Life safety from fire.* Except as provided in paragraphs (a)(1) through (a)(3) of this section, the skilled nursing facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference).¹

¹ Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code

(1) A skilled nursing facility is considered to be in compliance with this standard as long as the facility—

(i) On November 26, 1982, complied, with or without waivers, with the requirements of the 1967 or 1973 editions of the Life Safety Code and continues to remain in compliance with those editions of the Code; or

(ii) On May 9, 1988, complied, with or without waivers, with the 1981 edition of the Life Safety Code and continues to remain in compliance with that edition of the Code.

(2) After consideration of State survey agency findings, HCFA may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of patients.

(3) The provisions of the Life Safety Code do not apply in a State where HCFA finds, in accordance with applicable provisions of section 1861(j)(13) of the Social Security Act, that a fire and safety code, imposed by State law, adequately protects patients in skilled nursing facilities.

(4) Any facility of two or more stories that is not of fire resistive construction and is participating on the basis of a waiver of construction type of height, may not house blind, nonambulatory, or physically handicapped patients above the street-level floor unless the facility—

(i) Is one of the following construction types (as defined in the Life Safety Code):

(A) Type II (1, 1, 1)—protected non-combustible.

(B) Fully sprinklered Type II (0, 0, 0)—non-combustible.

(C) Fully sprinklered Type III (2, 1, 1)—protected ordinary.

(D) Fully sprinklered Type V (1, 1, 1)—protected wood frame; or

(ii) Achieves a passing score on the Fire Safety Evaluation System (FSES).

II. Part 416 is amended as follows:

(published February 7, 1985; ANSI/NFPA) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, NW, Washington, D.C. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Mass. 02269. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register.

PART 416—AMBULATORY SURGICAL SERVICES

Subpart B—Ambulatory Surgical Centers: Coverage and Benefits

1. The authority citation for Part 416 continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863 and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395(l), 1395z and 1395aa).

2. In § 416.44 paragraph (b) and the footnote are revised to read as follows:

§ 416.44 Condition for coverage—Environment.

(b) *Standard: Safety from fire.* (1) Except as provided in paragraphs (b) (2) and (3) of this section, the ASC must meet the provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference)¹ that are applicable to ambulatory surgical centers.

(2) In consideration of a recommendation by the State survey agency, HCFA may waive, for periods deemed appropriate, specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon an ASC, but only if the waiver will not adversely affect the health and safety of the patients.

(3) Any ASC that, on May 9, 1988, complies with the requirements of the 1981 edition of the Life Safety Code, with or without waivers, will be considered to be in compliance with this standard, so long as the ASC continues to remain in compliance with that edition of the Life Safety Code.

III. Part 418 is amended as follows:

PART 418—HOSPICE CARE

Subpart C—Conditions of Participation

1. The authority citation for Part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395x–1395cc and 1395hh).

2. Section 418.100 is amended by revising paragraph (d) to read as follows: removing paragraph (e); redesignating the current paragraphs (f)–(l) as (e)–(k); and by amending redesignated (f)(2) by changing the reference “(g)(i)(v) and (vi)” to “(i)(i)(v) and (vi).”

¹ See footnote to § 405.1134(a) of this chapter.

§ 418.100 Condition of participation for freestanding hospices providing inpatient care directly.

(d) *Standard: Fire protection.* (1) Except as provided in paragraphs (d) (2) and (3) of this section, the hospice must meet the provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference)¹ that are applicable to hospices.

(2) In consideration of a recommendation by the State survey agency, HCFA may waive, for periods deemed appropriate, specific provisions of the Life Safety Code which, if rigidly applied would result in unreasonable hardship for the hospice, but only if the waiver would not adversely affect the health and safety of the patients.

(3) Any hospice that, on May 9, 1988, complies with the requirements of the 1981 edition of the Life Safety Code, with or without waivers, will be considered to be in compliance with this standard, as long as the hospice continues to remain in compliance with that edition of the Life Safety Code.

(4) Any facility of two or more stories that is not of fire resistive construction and is participating on the basis of a waiver of construction type or height, may not house blind, nonambulatory, or physically handicapped patients above the street-level floor unless the facility—

(i) Is one of the following construction types (as defined in the Life Safety Code):

(A) Type II (1, 1, 1)—protected non-combustible.

(B) Fully sprinklered Type II (0, 0, 0)—non-combustible.

(C) Fully sprinklered Type III (2, 1, 1)—protected ordinary.

(D) Fully sprinklered Type V (1, 1, 1)—protected wood frame; or

(ii) Achieves a passing score on the Fire Safety Evaluation System (FSES).

IV. Part 442 is amended as follows:

PART 442—STANDARDS FOR PAYMENTS FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Subpart F—Standards for Intermediate Care Facilities Other Than Facilities for the Mentally Retarded

1. The authority citation for Part 422 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 442.321 paragraphs (a) and (c) are revised to read as follows:

§ 442.321 Fire protection.

(a) Except as provided in § 442.323 and paragraph (b) of this section, the ICF must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association which is incorporated by reference.¹

(c) Any facility that on November 26, 1982 complies with the requirements of the 1967 edition of the Life Safety Code, or, on May 9, 1988, complies with the requirements of the 1981 edition of the Life Safety Code, with or without waivers, will be considered to be in compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

§ 442.322 [Removed]

3. Section 442.322 is removed.

4. Section 442.323 is revised to read as follows:

§ 442.323 Fire protection: waivers.

The State survey agency may waive specific provisions of the Life Safety Code required by § 442.321, for so long as it considers appropriate, if—

(a) The waiver would not adversely affect the health and safety of the residents;

(b) Rigid application of specific provisions of the Life Safety Code would result in unreasonable hardship for the ICF; and

(c) The waiver is granted in accordance with guidelines issued by HCFA.

(d) Any facility of two or more stories that is not of fire resistive construction and is participating on the basis of a waiver of construction type or height may not house blind, nonambulatory, or physically handicapped patients above the street-level floor unless the facility—

(i) Is one of the following construction types (as defined in the Life Safety Code):

(A) Type II (1, 1, 1)—protected non-combustible.

(B) Fully sprinklered Type II (0, 0, 0)—non-combustible.

(C) Fully sprinklered Type III (2, 1, 1)—protected ordinary.

(D) Fully sprinklered Type V (1, 1, 1)—protected wood frame; or

(ii) Achieves a passing score on the Fire Safety Evaluation System (FSES).

V. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION

Subpart C—Basic Hospital Functions

1. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102, 1814(a)(7), 1861 (e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1888, and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(7), 1395x (e), (f), (k), (r), (v)(1)(G), and (z), 1395aa, 1395hh, 1395tt, 1395ww, and 1396 d(a)).

2. In § 482.41, paragraph (b)(1) and the footnote are revised to read as follows:

§ 482.41 Condition of participation—physical environment.

(b) *Standard: Life safety from fire.* (1) Except as provided in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the hospital must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference).¹

(i) Any hospital that on November 26, 1982, complied, with or without waivers, with the requirements of the 1967 edition of the Life Safety Code, or on May 9, 1988, complied with the 1981 edition of the Life Safety Code, is considered to be in compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

(ii) After consideration of State survey agency findings, HCFA may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of patients.

(iii) The provisions of the Life Safety Code do not apply in a State where HCFA finds that a fire and safety code imposed by State law adequately protects patients in hospitals.

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program; 13.743, Medicare—Hospital Insurance; and 13.744, Medicare—Supplementary Medical Insurance)
Dated: October 27, 1987.

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: December 10, 1987.

Otis R. Bowen,
Secretary.
[FR Doc. 88-7588 Filed 4-6-88; 8:45 am]

BILLING CODE 4120-01-M

¹ See footnote to § 405.1134(a) of this chapter.

¹ See footnote to § 405.1134(a) of this chapter.

¹ See footnote to § 405.1134(a) of this chapter.

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****44 CFR Part 67**

[Docket No. FEMA-6920]

Final Flood Elevation Determinations**AGENCY:** Federal Emergency
Management Agency.**ACTION:** Deletion of final rule.

SUMMARY: The Federal Insurance Administration has erroneously published the final flood elevation determination for the City of Ormond Beach, Volusia County, Florida. This notice will serve to delete that publication. Following an engineering analysis and review, a new notice of final flood elevation determination will be issued.

EFFECTIVE DATE: April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Emergency Management Agency has determined that the notice of final flood elevation determination for the City of Ormond Beach, Volusia County, Florida, published at 53 FR 7917, on March 11, 1988, should be deleted, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

Issued: April 1, 1988.

Harold T. Duryee,
*Administrator, Federal Insurance
Administration.*

[FR Doc. 88-7618 Filed 4-6-88; 8:45 am]

BILLING CODE 6716-21-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration****50 CFR Part 285**

[Docket No. 70355-7127]

Atlantic Tuna Fisheries**AGENCY:** National Marine Fisheries
Service (NMFS), NOAA, Commerce.**ACTION:** Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels permitted in the Incidental longline category. Closure of this fishery is necessary because the total annual quota of 145 short tons (st) for this category will be exceeded by the effective date. The intent of this action is to prevent further overharvest of the total annual quota established for the U.S. fishery and thereby maintain the United States' obligations under the International Commission for the Conservation of Atlantic Tunas.

EFFECTIVE DATE: 0001 hours local time, April 7, 1988, through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 617-281-3600, extension 324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating fishing for Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction appear at 50 CFR Part 285.

Section 285.22(f)(1) of the regulations provides for an annual quota of 145 st of Atlantic bluefin tuna to be taken by vessels permitted in the Incidental longline category in the Regulatory

Area. Of this amount, 115 st is allocated for the area south of 36°00'N. latitude. The southern area was closed on March 16, 1988 (53 FR 8631, March 16, 1988), when it was determined that the 115 st quota for that area was reached.

The Assistant Administrator for Fisheries, NOAA, is required under § 285.20(b)(1) to monitor the landing statistics and, on the basis of these statistics, to project a date when any quota under § 285.22 will be reached. He is further required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of vessels subject to the quotas. The Assistant Administrator has determined, based on the reported landings of Atlantic bluefin tuna, that the annual quota of Atlantic bluefin tuna allocated to vessels permitted in the Incidental longline category has been attained. Fishing for or retention of any Atlantic bluefin tuna by these vessels must cease at 0001 hours, local time, on April 7, 1988.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties. (16 U.S.C. 971 *et seq.*)

Dated: April 4, 1988.

Ann D. Terbush,

*Acting Director, Fisheries Conservation and
Management, National Marine Fisheries
Service.*

[FR Doc. 88-7691 Filed 4-4-88; 4:44 pm]

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